IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3033 OF 2005

Swapnil Madhukar Ramade minor through his mother and next friend Smt.Damayanti Madhukar Ramade .. Petitioner

Versus

Rajaram Jagu Sahu and Ors. .. Respondents

Mr.M.B.Kotak for petitioner

CORAM : S.C.DHARMADHIKARI, J.
DATE : 21st February 2006.

P.C.

. Heard Mr.Kotak appearing for petitioner. He states that respondent No.2, Insurance Company is contesting respondent and service is effected. He seeks time to place affidavit proving the same.

2. Affidavit to be filed within a period of one week from today.

3. Since the second respondent has received a copy of petition, along with its annexures with the communication of petitioner's Advocate dated 11th February 2006 and the order that I propose to pass, causing no prejudice to it, I am disposing of the present petition.

4. Application under section 140 preferred by petitioner has been rejected by the learned Member of Motor Accidents Claim Tribunal on the ground that the medical certificate is dated 12th April 2004 whereas the injuries are of 3rd June 2001. The Court has rejected the application because the latest position about injuries is not brought on record. Application is under section 140 of the Motor Vehicles Act which is for payment of compensation on the principle of no fault liability. It is expected of the Tribunal to decide the matter considering the intent and purpose for which this provision is made. The order under challenge contains observations of

the learned Member to the effect that the applicant has not made out a case of disability as contemplated by section 140 read with 142 of M.V.Act. In my view, the observations made, overlook the certificate and the contents thereof. Further, they overlook the intent and purpose of incorporating the provision of no fault liability in the M.V.Act.

5. In these circumstances, interest of justice would be served if the order passed by the learned Member dated 1st October 2004 is set aside and the application under section 140 being Application Exh.2 in Claim Application No.1560A/2001 is restored to the file of learned Member for disposal afresh in accordance with law. The trial court shall endeavour and dispose of the said application within a period of four weeks from the date of production of copy of this order. Petition disposed of.

(S.C.DHARMADHIKARI, J)